THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.9075 OF 2005

ORDER:

This Writ Petition is filed seeking a declaration that the auction proposed to be held, in respect of the leasehold rights of the land to an extent of Ac.7.02 cents, in R.S.No.303, situated in Gollapudi, Vijayawada Rural Mandal, Krishna District, as arbitrary and illegal.

The writ petitioner claims to be the cultivating tenant in respect of the land in question, which admittedly, belongs to the Sri Posani Narasimha Rao Chowdary High School, Gollapudi, Vijayawada. It is stated that he was the highest bidder in the auction conducted in the year 1993 and since then he has been continuing as the cultivating tenant on payment of rents. It is alleged that on 17.04.2005, the 3rd respondent-Executive Officer, notified in the village that auction would be conducted in respect of the leasehold rights of the land in question. Immediately, the petitioner approached the Chairman of the Trust Board, who stated that he was not aware of the proposed auction. It is contended that the 3rd respondent-Executive Officer, even in the absence of any Resolution by the Trust Board, has proposed to conduct the impugned auction. The said action of the 3rd respondent is not in accordance with Section 29(5) of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Act"). Hence, this Writ Petition contending that he being a statutory tenant and a land less poor, the 3rd respondent-Executive Officer, ought not to have taken steps to dispossess him.

On behalf of the 3rd respondent-Executive Officer, a counter-affidavit has been filed stating that a notice dated 13.10.2004 was issued in Form-I under Rule 5(1) of the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short "the Rules") directing the petitioner to deliver possession of the agricultural land. Since the petitioner failed to produce any declaration from the competent authority that he is a land less poor, further steps were taken and the possession was already taken on 27.01.2005. It is also stated

that since admittedly the petitioner is not a land less poor, he is not entitled to continue in possession, and, accordingly, having obtained possession through Assistant Commissioner of Endowments, auction was conducted on 23.04.2005, in which the highest bidder offered Rs.90,000/- per year. However, the same could not be finalized in view of the pendency of this Writ Petition.

I have heard the learned counsel for both the parties.

As can be seen from the material on record, notice of termination in Form-I was issued to the petitioner as long back as 13.10.2004. The proceedings of the Assistant Commissioner of Endowments, Vijayawada further shows that having received the notice in Form-I, the writ petitioner failed to hand over vacant possession even after lapse of 30 days, and therefore, the Assistant Commissioner of Endowments, having invoked the power under Section 84 of the Act, removed the encroachment and obtained possession of the land. The specific case of the 3rd respondent is that the Institution was put in possession of the land by the Assistant Commissioner of Endowments on 27.05.2005 itself.

Nothing has been placed before this Court to show that the petitioner is in possession as of today. That apart, since the petitioner makes a claim in respect of Ac.7.02 cents of land, admittedly, he cannot be treated as a land less poor within the meaning of Explanation I to Section 82 (2) of the Act. If that be so, by operation of Section 82 of the Act, read with Rule 3 of the Rules, the tenancy in his favour stands terminated automatically.

However, the learned counsel for the petitioner vehemently contends that under Section 29 of the Act, the Executive Officer, should be under the administrative control of the Trustee of the Institution, and he shall be responsible for carrying out all lawful directions issued by such trustee, from time to time. The learned counsel submits that in the case on hand, the Trust Board never passed any Resolution to evict the petitioner from the land in question and the impugned auction was proposed by the Executive Officer on his own without the knowledge of the Trust Board, and therefore, the said action being in contravention of Section 29(5) of the Act, is unsustainable.

One C. Venkateswara Rao, claiming himself to be the Chairman of the Trust Board, filed a counter-affidavit dated 3.07.2005 stating that the action of the 3rd

respondent in proposing to conduct auction, was without following the procedure under the provisions of Act 30 of 1987.

Even assuming that the 3rd respondent failed to act in conformity with sub-section (5) of Section 29 of the Act, since admittedly the petitioner is not a land less poor, I am of the opinion that the lease in his favour automatically stood terminated by virtue of Section 82 (1) of the Act. Consequently, he cannot claim any right to continue in possession of the land in question. Therefore, the mere fact that the Trust Board of the Institution was not aware of the impugned auction proposed to be conducted by the Executive Officer, does not in any way vitiate the proceedings. The Writ Petition is misconceived and without any substance.

The Writ Petition is accordingly dismissed. No costs.

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(G. ROHINI, J.)

28th November, 2005.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.9075 OF 205

28th November, 2005.

Between:

Chigurupati Basaveswara Rao. .. Petitioner.

And

The Assistant Commissioner, Endowments

Department, Government of Andhra Pradesh,

Opp. Old Bus Stand, Near Kesineni Travels,

Vijayawada and two others. .. Respondents.